

Zoning Text Amendment No: 04-10
Concerning: Accessory Apartments
Draft No. & Date: 1 – 6/29/04
Introduced: June 29, 2004
Public Hearing: 9/30/04 – 7:30 PM
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- revising the definition for accessory apartment and adding a definition for accessory apartment, large;
- revising the approval process for accessory apartments from a special exception to administrative review for certain accessory apartments;
- adding a requirement that an accessory apartment is not allowed if more than 15 percent of the dwelling units in the neighborhood have an accessory apartment, are single-family rental units, or contain a similar use;
- deleting the minimum age of house and length of ownership before an accessory apartment may be approved;
- adding a maximum size of 800 square feet for an interior accessory apartment and an 800 square foot footprint for an accessory apartment in a separate structure;
- changing the definition of owner to include the parent or child of the owner;
- reducing the maximum length of an owner's absence to 3 months; and
- allowing for flexibility from the land use standards for an accessory apartment subject to site plan approval.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATIONS”
Section 59-A-2.1	“Definitions”
DIVISION 59-A-6	“USES PERMITTED IN MORE THAN ONE CLASS OF ZONE”
Section 59-A-6.10	“Registered living unit—Standards and requirements”
Section 59-A-6.17	“Accessory apartment”
DIVISION 59-C-1	“RESIDENTIAL ZONES, ONE-FAMILY”
Section 59-C-1.31	“Land uses”

Section 59-C-1.53	“Development standards”
Section 59-C-1.62.	“Development standards
DIVISION 59-C-9	“AGRICULTURAL ZONES’
Section 59-C-9.3	“Land uses”
Section 59-C-9.41	“Density in RDT zone”
Section 59-C-9.6	“Transfer of density – Option in Rural Density Transfer zone”
DIVISION 59-E-3	“NUMBER OF SPACES REQUIRED”
Section 59-E-3.7	“Schedule of requirements”
DIVISION 59-G-1	“SPECIAL EXCEPTIONS—AUTHORITY AND PROCEDURE”
Section 59-G-1.3	“Compliance with special exception grant”
DIVISION 59-G-2	“SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS”
Section 59-G-2.00	“Accessory apartment”
Section 59-G-200.1	“Accessory dwelling”

EXPLANATION: ***Boldface*** indicates a heading or a defined term.

Underlining indicates text that is added to existing laws by the original text amendment.

[*Single boldface brackets*] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[*Double boldface brackets*]] indicate text that is deleted from the text amendment by amendment.

* * * indicates existing law unaffected by the text amendment.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

* * *

59-A-2.1. Definitions.

* * *

Accessory apartment: A second dwelling unit that is part of a[n existing] one-family detached dwelling, or is located in a separate [existing] accessory structure on the same lot as the main dwelling, with provision within the accessory apartment for cooking, eating, sanitation and sleeping. Such a dwelling unit is subordinate to the main dwelling.

Accessory apartment, large: An accessory apartment that has more than 800, but less than 1,200 square feet of habitable area if a part of a one-family detached dwelling, or that is located in a separate accessory structure having a footprint of over 800 square feet, but less than 2,500 square feet, of habitable area.

* * *

Dwelling and dwelling units:

Dwelling: A building or portion thereof arranged or designed to contain one or more dwelling units.

Dwelling, one-family: A dwelling containing not more than one dwelling unit. An accessory apartment, a large accessory apartment, if approved by special exception, or a registered living unit may also be part of a one-family dwelling. A one-family dwelling with [either] one of these subordinate uses is not a two-family dwelling, as defined in this section.

* * *

Dwelling unit: A building or portion thereof providing complete living facilities for not more than one family, including, at a minimum, facilities for cooking, sanitation and sleeping.

Dwelling unit, one-family detached: A dwelling unit that is separated and detached from any other dwelling unit on all sides, except where the dwelling is modified to include an accessory apartment, a large accessory apartment, approved by special exception, or a registered living unit.

Sec. 2. DIVISION 59-A-6 is amended as follows:

DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.

* * *

59-A-6.10. Registered living unit--Standards and requirements.

A registered living unit, permitted in[,] agricultural, one-family residential and planned unit development zones, must:

* * *

- (i) be removed whenever it is no longer occupied as a registered living unit unless the owner applies for and is granted a special exception for [an] a large accessory apartment in accordance with Section 59-G-2.00 or the Director finds the unit complies with Section 59-A-6.17, and a license has been issued under Section 29-16, or whenever the one-family detached dwelling [unit] in which it is located is no longer occupied by the owner.

* * *

59-A-6.17. Accessory apartment.

An accessory apartment is permitted on the same lot as a one-family detached dwelling, subject to the following:

- (a) Dwelling unit requirements:

52 (1) An addition or extension to a main dwelling may be approved in
53 order to add additional floor space to accommodate an accessory
54 apartment. All development standards of the zone apply.

55 (2) To preserve the appearance of a single-family dwelling:

56 (i) The accessory apartment must have the same street address or
57 house number as the main dwelling;

58 (ii) An exterior entrance to an accessory apartment must have a less
59 prominent appearance and location than the entrance to the
60 main dwelling.

61 (iii) All external modifications and improvements must be
62 compatible with the existing dwelling and surrounding
63 properties.

64 (3) The accessory apartment must be subordinate to the main dwelling
65 and the habitable area of the apartment must be no more than 800
66 square feet, if within the main dwelling, or have a footprint of no
67 more than 800 square feet, if in a separate accessory structure. A
68 large accessory apartment may be allowed under 59-G-2.00.

69 (4) The occupancy limits of an accessory apartment must be consistent
70 with the requirements of Section 29-19(b).

71 (b) Ownership requirements:

72 (1) For purposes of this section, “owner” means an individual who owns
73 a substantial equitable interest in the property, or the parent or child
74 of the individual.

75 (2) The owner of the lot on which the accessory apartment is located
76 must occupy one of the dwelling units, except for bona fide
77 temporary absences not exceeding 3 months in any 12-month period.

The period of temporary absence may be increased by the Director upon a finding that a hardship would otherwise result.

(3) The owner may not receive compensation for the occupancy of more than one dwelling unit.

(c) Land use requirements:

(1) Only one accessory apartment may be created on the same lot as a one-family detached dwelling. An accessory apartment may not be created on the same lot as a mobile home or an attached single family unit.

(2) On a lot of less than one acre (43,560 square feet), the accessory apartment must share at least one wall, floor, or ceiling with the main dwelling. On a lot of one acre or more, an accessory apartment may be in a separate accessory structure.

(3) The minimum lot size is 6,000 square feet. A property consisting of more than one record lot, including a part of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed before October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building.

(4) The accessory apartment must not be located on a lot:

(i) Where any of the following residential uses exist: guest room for rent, boardinghouse or a registered living unit; or

(ii) With any rental residential use other than an accessory dwelling in an agricultural zone.

(5) An accessory apartment must not result in an excessive concentration of similar uses, including single-family rental units, in

the general neighborhood of the proposed use. An excessive concentration is reached when the number of accessory apartments, rental single-family units, and other similar uses, equals 15 percent or more of the total number of housing units in the neighborhood. In determining the boundaries of the neighborhood, the Director will take into consideration natural boundaries, including streams, major roads, public facilities, and land in non-residential zones. The Director may exceed the 15 percent requirement if the Director finds that there will be no adverse impact on the neighborhood.

(6) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces, unless the Director finds that:

(i) More spaces are required to supplement on-street parking; or

(ii) Adequate on-street parking permits fewer off-street spaces.

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line. The Director may condition the approval on where parking may be located and may require that certain parking be reserved for tenant use only.

(d) For a property which is subject to site plan approval, the Planning Board, in consultation with the Director, may:

(1) Allow an accessory apartment to have a separate address;

(2) Reduce the minimum lot size for an accessory apartment in a separate structure; and

(3) Allow a higher concentration of accessory apartments in a neighborhood.

In approving modifications to these requirements, the Planning Board must find that the changes will preserve the character of the neighborhood

in which the accessory apartments are located, and that the increased concentration of accessory apartments will not have an adverse impact on the neighborhood.

(e) Application. The applicant for an accessory apartment must submit to the Director a completed form; a plan, drawn to scale, showing the location of the main dwelling and all accessory structures on the lot; a floor plan of the accessory apartment; the location and dimensions of all onsite parking spaces and access driveways; the location of anticipated on-street parking; and the names and addresses of the adjoining and confronting property owners and any neighborhood association. Where an accessory apartment is proposed in an existing dwelling, the applicant must submit a photograph of the main dwelling. The Director may require the applicant to provide a copy of the deed or plat map.

(f) Notice. At least 30 days before acting on the application, the Director must send written notice to:

- (1) The owners of property that adjoins and confronts the property on which the accessory apartment is proposed;
- (2) The neighborhood association, where applicable; and
- (3) The municipality, where applicable.

(g) Planning Review. At least 30 days before acting on the application, the Director must provide the technical staff of the Planning Board with a copy of the application. Within 30 days of receiving the application, the technical staff must submit to the Director, on a form provided by the Director, a report indicating whether the proposed accessory apartment complies with Chapter 59 and the applicable master plan.

(h) License Required. An accessory apartment is subject to the licensing requirement of Chapter 29.

(i) Existing accessory apartment.

(1) Any accessory apartment approved by the Board between December 2, 1983, and [Effective Date of this ZTA] is a conforming use and may be continued if it complies with the conditions imposed by the Board and all provisions of Chapter 59 at the time that it was approved, and has a license under Chapter 29.

(2) The Director may approve a modification to an existing accessory apartment provided the modification is in conformance with the standards and requirements of this section.

(j) Executive Regulations. The Director is authorized to adopt Executive Regulations by Method 2 which may:

(1) provide for periodic inspections, including access by inspectors at reasonable times, and compliance with applicable codes;

(2) establish procedures for initial and continuing compliance of an accessory apartment including provisions for removal or modification when it is no longer being used for purposes set forth in the definition;

(3) include such other regulations as may be necessary to carry out the intent of this Section; and

(4) establish fees as necessary to cover the cost of administration.

Sec. 3. DIVISION 59-C-1 is amended as follows:

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY.

* * *

59-C-1.31. Land uses.

* * *

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 Plex	RMH 200
(a) Residential										
Accessory apartment. ^[4]	[SE] P	[SE] P	[SE] P	[SE] P	[SE] P	[SE] P	[SE] P			[SE] P
Accessory apartment, large.	SE	SE	SE	SE	SE	SE	SE			SE

* * *

^[4] Not permitted in a mobile home.]

* * *

59-C-1.53. Development standards.

* * *

	RE-2C	RE-1	R-200	R-150	R-90	R-60	RMH 200
59-1.531. Uses Permitted. * * *							
Accessory apartment. ^[2]	[SE]P	[SE]P	[SE]P	[SE]P	[SE]P	[SE]P	[SE]P
Accessory apartment, large.	SE	SE	SE	SE	SE	SE	SE

* * *

^[2] Not permitted in a townhouse, one-family attached dwelling unit or mobile home.]

* * *

59-C-1.6. Development including moderately priced dwelling units.

* * *

59-C-1.62. Development standards.

	R-200	R-150	R-90	R-60	R-40
59-1.621. Uses Permitted. * * *					
Accessory apartment. ^[3]	[SE]P	[SE]P	[SE]P	[SE]P	
Accessory apartment, large	SE	SE	SE	SE	

* * *

^[3] Not permitted in a townhouse, one-family attached dwelling unit or mobile home.]

* * *

Sec. 4. DIVISION 59-C-9 is amended as follows:

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

59-C-9.3. Land uses.

No use is allowed except as indicated in the following table:

* * *

	Rural	RC	LDRC	RDT	RS	RNC
(e) Residential: ²						
Accessory apartment. ^[6,7]	<u>[SE]P</u>	<u>[SE]P</u>	<u>[SE]P</u>	<u>[SE]P</u>		<u>[SE]P</u>
<u>Accessory apartment, large.</u>	<u>SE</u>	<u>SE</u>	<u>SE</u>	<u>SE</u>		<u>SE</u>

* * *

[⁶ Not permitted in a mobile home.]

[⁷ As a special exception regulated by divisions 59-G-1 and 59-G-2, such a dwelling unit is excluded from the density calculations set forth in sections 59-C-9.41, title "Density in RDT Zone," and 59-C-9.6, title "Transfer of Density-Option in RDT Zone." Once the property is subdivided, such a dwelling would no longer comply with the special exception regulations or with this exclusion. A special exception is not required for a dwelling that was a farm tenant dwelling in existence prior to June 1, 1958, provided, that the dwelling meets all applicable health and safety regulations.]

* * *

59-C-9.41. Density in RDT zone.

Only one one-family dwelling unit per 25 acres is permitted. (See section 59-C-9.6 for permitted transferable density.) The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

(a) * * *

(b) [An] A large accessory apartment or accessory dwelling regulated by the special exception provisions of division 59-G-1 and 59-G-2.

(c) An accessory apartment approved under section 59-A-6.17.

* * *

59-C-9.6. Transfer of density-Option in Rural Density Transfer zone.

In accordance with section 59-C-1.39 and in conformance with an approved and adopted general, master, sector, or functional plan, residential density may be transferred at the rate of one development right per 5 acres minus one development right for each existing dwelling unit, from the Rural Density Transfer zone to a duly designated receiving zone, pursuant to section 59-C-1.39. The density transfer provisions are not applicable to publicly owned rights-of-way for roads, streets, alleys, easements, or rapid transit routes classified in the Rural Density Transfer zone. The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

(a) * * *

(b) [An] A large accessory apartment or accessory dwelling regulated by the special exception provisions of divisions 59-G-1 and 59-G-2.

(c) An accessory apartment approved under section 59-A-6.17.

Sec. 5. DIVISION 59-E-3 is amended as follows:

DIVISION 59-E-3. NUMBER OF SPACES REQUIRED.

* * *

59-E-3.7. Schedule of requirements.

* * *

Accessory apartment and large accessory apartment. Normally 2 parking spaces per lot; however, the Director may require more or permit fewer spaces in accordance with the provisions of Sec. 59-A-6.17(c)(3).

* * *

[Apartment, accessory. Normally 2 parking spaces per lot. However, the Board of Appeals may require more or permit less in accordance with the special

exception provisions for accessory apartments contained in Section 59-G-2.00(c)(4).]

Sec. 6. DIVISION 59-G-1 is amended as follows:

DIVISION 59-G-1. SPECIAL EXCEPTIONS – AUTHORITY AND PROCEDURE.

* * *

59-G-1.3. Compliance with special exception grant.

* * *

(c) **Modification.** The Board may amend or modify the terms or conditions of a special exception on request of the special exception holder or recommendation of the Department, or after a show cause hearing held under subsection (e).

(1) If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition. However, if the matter involves [an] a large accessory apartment, the Board must not act until 10 days after the posting of the property with a special exception for accessory apartment sign under Section 59-A-4.43. The sign must remain posted until at least 15 days after the mailing of the Board's resolution. The affirmative vote of at least 4 members of the Board is required to modify the terms or conditions.

Sec. 7. DIVISION 59-G-2 is amended as follows:

DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.

The uses listed in this Division, as shown on the index table below, may be allowed as special exceptions in any zone where they are so indicated, as provided in this Article, subject to the standards and requirements in this Division and the general conditions specified in Section 59-G-1.21.

USE SECTION

Abattoir G-2.00.2

Accessory apartment, large G-2.00

* * *

Sec. 59-G-2.00. Accessory apartment, large.

A special exception may be granted for [an] a large accessory apartment on the same lot as an existing one-family detached dwelling, subject to the [following standards and] dwelling unit, ownership, and land use requirements of Section 59-A-6.17, excluding the limitation on size of the accessory apartment, and the following requirements:

[(a) Dwelling unit requirements:

(1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.

(2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:

(i) The lot is 2 acres or more in size; and

(ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to a senior adult, ill or disabled relative of the owner-occupant.

(3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.

(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.

(5) The accessory apartment must not be located on a lot:

(i) That is occupied by a family of unrelated persons; or

(ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or

(iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.

(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.

(8) The accessory apartment must have the same street address (house number) as the main dwelling.

(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet. The 1,200 square feet limitation does not apply to an accessory apartment located in a separate existing accessory

structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.

(b) Ownership requirements:

- (1) The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.
- (2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the applicant, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.
- (3) Under no circumstances is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.
- (4) For purposes of this section, “owner” means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.
- (5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by a senior adult who has been a continuous tenant of the accessory apartment for at least 20 years.

(c) Land use requirements:

- (1) The minimum lot size is 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of

more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use (see also Section 59-G-1.21(a)(7) which concerns excessive concentration of special exceptions in general).

(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces, unless the Board makes either of the following findings:

(i) More spaces are required to supplement on-street parking; or

(ii) Adequate on-street parking permits fewer off-street spaces.

Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.]

[(d)](a) Data to accompany application. The Board may waive for good cause shown any of the data required to accompany an application for special exception upon written request of the applicant. The Board may accept plans or drawings prepared by the applicant so long as they are substantially to scale and provide information the Board determines is adequate.

386 [(e)](b) **Existing accessory apartment.** Any large accessory apartment
 387 approved by the Board between December 2, 1983, and October 30, 1989,
 388 in accordance with the standards in effect during that period, is a
 389 conforming use and it may be continued as long as the accessory
 390 apartment complies with the conditions imposed by the Board and all
 391 provisions of Division 59-G-1.

392 [(f)](c) **Notice by sign required for continuation of use by new property**
 393 **owner.** If a new property owner applies to continue an existing large
 394 accessory apartment as a minor modification, a sign giving notice of the
 395 application must be erected and maintained as required by Sec. 59-G-
 396 1.3(c).

397 **59-G-2.00.1. Accessory dwelling.**

398 * * *

399 (c) The total number of accessory dwellings must not exceed 4 on any one lot
 400 or parcel. If there is also on the parcel an accessory apartment as regulated
 401 by section 59-A-6.17, or large accessory apartment as regulated by section
 402 59-G-2.00, [on the parcel,] the total number of accessory dwellings, as
 403 regulated by this section, must not exceed 3.

404 * * *

405 [(i) Accessory dwellings are subject to the same legislative review and annual
 406 reporting provisions applicable to accessory apartments, as set forth in
 407 section 59-G-2.00(f) and (g).]

408 [(j)] (i) Such a dwelling unit is excluded from the density calculations set
 409 forth in sections 59-C- 9.41, “Density in RDT Zone,” and 59-C-9.6,
 410 “Transfer of Density — Option in RDT Zone.” Once the land is
 411 subdivided, the dwelling is not excluded.

Sec. 7. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Mary A. Edgar, CMC
Clerk of the Council